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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

HORTON, YVONNE MICHELE

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 08/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	09/809,307	SMITH, ROBERT K.	
	Examiner	Art Unit	
	Yvonne M. Horton	3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2004 and 08 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-55 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 August 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11/11/03, 11/12/03</u> . | 6) <input checked="" type="checkbox"/> Other: <u>attached exhibit</u> . |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1,2,7-10 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,661,937 to DOPPLER et al. DOPPLER et al. discloses the use of a flooring panel (10) including an upper rigid sheet floor member (12,14,32,32a-c), a substantially rigid lower member (16) attached to the upper member (12,14) such that the lower member (16) has a plurality of projections (as at "18") extending away from the upper member (12,14) in support thereto, a undersurface (26,26a-c) and at least one part of an interlocking assembly (24,28,30) positioned at an edge of the panel (12,14) wherein the interlocking system (24,28,30) is configured to interlock via lateral movement, as indicated by the arrow in figure 3. DOPPLER et al. discloses the basic claimed invention except for explicitly detailing that his lower member protects the upper member from water and permits free drainage of water thereabout. Although DOPPLER et al. is silent in this regard, he does detail that the material of his lower member is a metal sheet. Even though metal is corrosive, metal is still very well known to protect other elements from water and is known to permit free drainage. For instance, in the case of creek and river runoffs, metal trenches are formed to aid in water flow, or in the case of gutters, metal gutters protect homes from external water damage and enhance water flow from the rooftop. Hence, it would have been obvious to one having ordinary skill in the art at the time the invention was made

that the metal lower rigid member of DOPPLER et al. is capable of protecting the upper member from water while also being capable of permitting the free drainage of water. Regarding claim 2, the upper member (12,14) of DOPPLER et al., column 5, lines 4-7, is composite compressed wood. As per the applicant's definition of "waferboard" on page 4 of his specification, "waferboard" is a "random" wood article and not an "oriented" wood article. Compressed wood also used "random" pieces of wood. Hence, although not explicitly detailed as a "waferboard" per se, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the compressed wood of DOPPLER et al. is considered as a "waferboard" material. In reference to claims 7 and 8, the lower member (16) is adhesively attached to the upper member (12,14,32,32a-c), column 8, lines 11-23. Regarding claim 9, the interlocking assembly (24,28,30) includes at least one tongue (28) and at least one groove (30). In reference to claim 10, the interlocking assembly (24,28,30) includes at least one key (28) and at least one groove (30). Regarding claim 27, the rigid sheet-flooring member (12,14) is wood, column 5, lines 4-6.

Claims 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,661,937 to DOPPLER et al. in view of US Patent #5,619,832 to MYRVOLD. DOPPLER et al. discloses the basic claimed flooring panel except for the lower member being made from plastic material. Regarding claims 3-6, MYRVOLD teaches that it is known in the art to form a lower flooring member (1), that supports an upper member (P), out of a plastics material, and more specifically out of polyethylene, column 7,

line 44. Hence, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the lower member of DOPPLER et al. out of the plastic polyethylene material, as taught by MYRVOLD, in order to further protect the upper member from corrosion due to extended exposure to water.

Claims 11 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,661,937 to DOPPLER et al. in view of US Patent #4,287,693 to COLLETTE. DOPPLER et al. discloses the use of a flooring panel (10) including an upper rigid sheet floor member (12,14) having a tongue (28) and a groove (30), a substantially rigid lower member (16) attached to the upper member (12,14) such that the lower member (16) has a plurality of projections (as at "18") extending away from the upper member (12,14) in support thereto, and an undersurface (26,26a-c). DOPPLER et al. discloses the basic claimed invention except for explicitly detailing that his lower member protects the upper member from water and permits free drainage of water thereabout and except for there being tongues and grooves on two adjacent edges. COLLETTE teaches that it is known in the art to form a flooring panel with tongues (12) and grooves (18) on adjacent edges, see figures 1 and 4. Although DOPPLER et al. is silent in regards to the lower member protecting the upper member from water and permitting free drainage of water thereabout, he does; however, detail that the material of his lower member is a metal sheet. Even though metal is corrosive, metal is still very well known to protect other elements from water and is known to permit free drainage. For instance, in the case of creek and river runoffs, metal trenches are formed to aid in water flow, or in the case of gutters, metal gutters protect

Art Unit: 3635

homes from external water damage and enhance water flow from the rooftop. Hence, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the flooring panel of DOPPLER et al. with tongues and grooves on adjacent edges, as taught by COLLETTE, in order to improve the efficiency of the interlock between adjacent flooring panel members thereby preventing uplift and drifting apart of the flooring panels. Also, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the metal lower rigid member of DOPPLER et al. is capable of protecting the upper member from water while also being capable of permitting the free drainage of water. In regards to the tongue and groove members preventing vertical movement, although DOPPLER et al. is silent in regards to preventing vertical movement, it is also obvious that the interconnection of the tongue and groove prevent vertical and horizontal movement. However, in addition to the tongue and groove interconnection, DOPPLER et al. further discloses the use a nail (24) along with the tongue and groove interconnection. The presence of this nail enhances prevention of vertical movement. The applicant is reminded that the functional recitation that "the tongue and grooves correspond to prevent relative vertical movement" has not been given patentable weight because it is narrative in form. In order to be given patentable weight, a functional recitation must be expressed as a "means" for performing the specified function, as set forth in 35 USC § 112, 6th paragraph, and must supported by recitation in the claim of sufficient structure to warrant the presence of the functional language. Regarding claim 28, the rigid sheet-flooring member (12,14) is wood, column 5, lines 4-6.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,661,937 to DOPPLER et al. in view of US Patent #4,287,693 to COLLETTE. DOPPLER et al. discloses the use of a flooring panel (10) including an upper rigid sheet flooring member (12,14) having a tongue (28) at one end and a groove (30) at the other, a substantially rigid lower member (16) attached to the upper member (12,14) such that the lower member (16) has a plurality of projections (as at "18") extending away from the upper member (12,14) in support thereto, and an undersurface (26,26a-c). DOPPLER et al. discloses the basic claimed invention except for explicitly detailing that his lower member protects the upper member from water and permits free drainage of water thereabout and except for there being tongues and grooves on two adjacent edges. COLLETTE teaches that it is known in the art to form a flooring panel with tongues (12) and grooves (18) on adjacent edges, see figures 1 and 4. Although DOPPLER et al. is silent in regards to the lower member protecting the upper member from water and permitting free drainage of water thereabout, he does detail that the material of his lower member is a metal sheet. Even though metal is corrosive, metal is still very well known to protect other elements from water and is known to permit free drainage. For instance, in the case of creek and river runoffs, metal trenches are formed to aid in water flow, or in the case of gutters, metal gutters protect homes from external water damage and enhance water flow from the rooftop. Hence, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the flooring panel of DOPPLER et al. with tongues and grooves on adjacent edges, as taught by COLLETTE, in order to improve the efficiency of the interlock

Art Unit: 3635

between adjacent flooring panel members thereby preventing uplift and drifting apart of the flooring panels. Also, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the metal lower rigid member of DOPPLER et al. is capable of protecting the upper member from water while also being capable of permitting the free drainage of water. In order to be given patentable weight, a functional recitation must be expressed as a "means" for performing the specified function, as set forth in 35 USC § 112, 6th paragraph, and must supported by recitation in the claim of sufficient structure to warrant the presence of the functional language.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,661,937 to DOPPLER et al. DOPPLER et al. discloses the use of a flooring panel (10) including a first flooring member (12) and a second flooring member (14) wherein each of the panels have an edge (28,30) having a tongue (28) at one end and a groove (30) at the other that are configured to be connected together. It would have been obvious to one having ordinary skill in the art at the time the invention was made that the metal lower rigid member of DOPPLER et al. is capable of protecting the upper member from water while also being capable of permitting the free drainage of water. In order to be given patentable weight, a functional recitation must be expressed as a "means" for performing the specified function, as set forth in 35 USC § 112, 6th paragraph, and must supported by recitation in the claim of sufficient structure to warrant the presence of the functional language.

Claims 14,15,17-23,29 and 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,661,937 to DOPPLER et al. DOPPLER et al. discloses

Art Unit: 3635

the use of a flooring assembly (10) including a first flooring member (12) including a first upper member (FUP) having a tongue (28) at one end and a groove (30) at another end and a substantially rigid lower member (16) attached to the first upper member (FUP), see the marked attachment, such that the lower member (16) has a plurality of projections (as at "18") extending away from the first upper member (FUP) in support thereto and an underlying surface (26,26a-c); and a second flooring member (14) including a second upper member (SUP), see marked attachment, having a tongue (28) at one end and a groove (30) at another and a substantially rigid lower member (16) attached to the second upper member (SUP) such that the lower member (16) also has a plurality of projections (as at "18") extending away from the second upper member (SUP) in support thereto and an underlying surface (26,26a-c) wherein the edge of each of the first (FUP) upper panels and the edge of the second (SUP) upper member are configured to be connected together. DOPPLER et al. discloses the basic claimed invention except for explicitly detailing that his lower member protects the upper member from water and permits free drainage of water thereabout. Although DOPPLER et al. is silent in this regard, he does detail that the material of his lower member is a metal sheet. Even though metal is corrosive, metal is still very well known to protect other elements from water and is known to permit free drainage. For instance, in the case of creek and river runoffs, metal trenches are formed to aid in water flow, or in the case of gutters, metal gutters protect homes from external water damage and enhance water flow from the rooftop. Hence, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the metal

Art Unit: 3635

lower rigid member of DOPPLER et al. is capable of protecting the upper member from water while also being capable of permitting the free drainage of water. Regarding claim 15, the upper member (UP) of DOPPLER et al., column 5, lines 4-7, is composite compressed wood. As per the applicant's definition of "waferboard" on page 4 of his specification, "waferboard" is a "random" wood article and not an "oriented" wood article. Compressed wood also used "random" pieces of wood. Hence, although not explicitly detailed as a "waferboard" per se', it would have been obvious to one having ordinary skill in the art at the time the invention was made that the compressed wood of DOPPLER et al. is considered as a "waferboard" material. Regarding claim 17, the first panel (12) includes a groove (30) and the second panel (14) includes a tongue (28). In reference to claims 18 and 23, the groove (30) of the first (12) and second (14) panels opens in a lateral direction. Regarding claim 19, the first upper member (FUP) includes the groove (30) and the second upper member (SUP) includes the tongue (28). In reference to claim 20, the edge of both the first (12) and second (14) panels each includes a groove (20). Regarding claim 21, the panels (12,14) further include at least one key (28). In reference to claim 22, the first upper member (FUP) includes the groove (30) of the first panel (12) and the second upper member (SUP) includes the groove (30) of the second panel (14). Regarding claim 29, the rigid sheet flooring material of the first (FUP) and second (SUP) upper member members is wood, column 5, lines 4-6. In reference to claim 30, the first and second (16) lower members are adhesively attached to the first (FUP) and second (SUP) upper members, column 8, lines 11-23.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,661,937 to DOPPLER et al. in view of US Patent #5,619,832 to MYRVOLD. DOPPLER et al. discloses the basic claimed flooring panel except for the lower member being made from plastic material. MYRVOLD teaches that it is known in the art to form a lower flooring member (1), that supports an upper member (P), out of a plastics material, and more specifically out of polyethylene, column 7, line 44. Hence, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the lower member of DOPPLER et al. out of the plastic polyethylene material, as taught by MYRVOLD, in order to further protect the upper member from corrosion due to extended exposure to water.

Claims 24,25 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,661,937 to DOPPLER et al. DOPPLER et al. discloses the use of a flooring panel (10) including an upper rigid sheet floor member (12,14,32,32a-c), a substantially rigid lower member (16) attached to the upper member (12,14) such that the lower member (16) has a plurality of projections (as at "18") extending away from the upper member (12,14) in support thereto and an underlying surface (26,26a-c) wherein the panel (10) includes a groove (30) configured to connect to an edge (28) of an adjacent panel (10) and the groove (30) opens in a lateral direction. DOPPLER et al. discloses the basic claimed invention except for explicitly detailing that his lower member protects the upper member from water and permits free drainage of water thereabout. Although DOPPLER et al. is silent in this regard, he does detail that the material of his lower member is a metal sheet. Even though metal is corrosive,

Art Unit: 3635

metal is still very well known to protect other elements from water and is known to permit free drainage. For instance, in the case of creek and river runoffs, metal trenches are formed to aid in water flow, or in the case of gutters, metal gutters protect homes from external water damage and enhance water flow from the rooftop. Hence, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the metal lower rigid member of DOPPLER et al. is capable of protecting the upper member from water while also being capable of permitting the free drainage of water. In regards to the tongue and groove members preventing vertical movement, although DOPPLER et al. is silent in regards to preventing vertical movement, it is also obvious that the interconnection of the tongue and groove prevent vertical and horizontal movement. However, in addition to the tongue and groove interconnection, DOPPLER et al. further discloses the use a nail (24) along with the tongue and groove interconnection. The presence of this nail enhances prevention of vertical movement. The applicant is reminded that the functional recitation that “the tongue and grooves correspond to prevent relative vertical movement” has not been given patentable weight because it is narrative in form. In order to be given patentable weight, a functional recitation must be expressed as a “means” for performing the specified function, as set forth in 35 USC § 112, 6th paragraph, and must supported by recitation in the claim of sufficient structure to warrant the presence of the functional language. In reference to claim 25, the upper member (12,14) includes the groove (30). Regarding claim 31, the rigid sheet-flooring member (12,14) is wood, column 5, lines 4-6.

Claims 26 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,661,937 to DOPPLER et al. in view of US Patent #4,287,693 to COLLETTE. DOPPLER et al. discloses the use of a flooring panel (10) including an upper rigid sheet floor member (12,14) having a tongue (28) and a groove (30), a substantially rigid lower member (16) attached to the upper member (12,14) such that the lower member (16) has a plurality of projections (as at "18") extending away from the upper member (12,14) in support thereto, and an underlying surface (26,26a-c). DOPPLER et al. discloses the basic claimed invention except for explicitly detailing that his lower member protects the upper member from water and permits free drainage of water thereabout and except for there being tongues and grooves on two adjacent edges. COLLETTE teaches that it is known in the art to form a flooring panel with tongues (12) and grooves (18) on adjacent edges, see figures 1 and 4. Although DOPPLER et al. is silent in regards to the lower member protecting the upper member from water and permitting free drainage of water thereabout, he does; however, detail that the material of his lower member is a metal sheet. Even though metal is corrosive, metal is still very well known to protect other elements from water and is known to permit free drainage. For instance, in the case of creek and river runoffs, metal trenches are formed to aid in water flow, or in the case of gutters, metal gutters protect homes from external water damage and enhance water flow from the rooftop. Hence, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the flooring panel of DOPPLER et al. with tongues and grooves on adjacent edges, as taught by COLLETTE, in order to improve the efficiency of the

interlock between adjacent flooring panel members thereby preventing uplift and drifting apart of the flooring panels. Also, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the metal lower rigid member of DOPPLER et al. is capable of protecting the upper member from water while also being capable of permitting the free drainage of water. Regarding claim 32, the rigid sheet-flooring member (12,14) is wood, column 5, lines 4-6.

Claims 33 and 35-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,661,937 to DOPPLER et al. DOPPLER et al. discloses the use of a flooring panel (10) including an upper rigid sheet floor member (12,14,32,32a-c), a substantially rigid lower member (16) attached to the upper member (12,14) such that the lower member (16) has a plurality of projections (as at "18") extending away from the upper member (12,14) in support thereto, an underlying surface (26,26a-c) and at least one part of an interlocking assembly (24,28,30) positioned at an edge of the panel (12,14) wherein the interlocking system (24,28,30) is configured to interlock via lateral movement, as indicated by the arrow in figure 3. DOPPLER et al. discloses the basic claimed invention except for explicitly detailing that his lower member protects the upper member from water and permits free drainage of water thereabout. Although DOPPLER et al. is silent in this regard, he does detail that the material of his lower member is a metal sheet. Even though metal is corrosive, metal is still very well known to protect other elements from water and is known to permit free drainage. For instance, in the case of creek and river runoffs, metal trenches are formed to aid in water flow, or in the case of gutters, metal gutters protect homes from external water

Art Unit: 3635

damage and enhance water flow from the rooftop. Hence, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the metal lower rigid member of DOPPLER et al. is capable of protecting the upper member from water while also being capable of permitting the free drainage of water. Regarding claim 35, the rigid sheet flooring material of the first upper member (12,14) is wood, column 5, lines 4-6. In reference to claims 36-37, the interlocking system (24,28,30) includes a tongue/key (28) and a groove (30). Regarding claim 38, the rigid sheet-flooring member (12,14) is wood, column 5, lines 4-6.

Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,661,937 to DOPPLER et al. in view of US Patent #4,287,693 to COLLETTE, as applied to claim 33 above, and further in view of US Patent #5,619,832 to MYRVOLD. DOPPLER et al., as modified by COLLETTE, discloses the basic claimed flooring panel except for the lower member being made from plastic material.

MYRVOLD teaches that it is known in the art to form a lower flooring member (1), that supports an upper member (P), out of a plastics material, and more specifically out of polyethylene, column 7, line 44. Hence, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the lower member of DOPPLER et al. out of the plastic polyethylene material, as taught by MYRVOLD, in order to further protect the upper member from corrosion due to extended exposure to water.

Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,661,937 to DOPPLER et al. in view of US Patent #4,287,693 to COLLETTE.

Art Unit: 3635

DOPPLER et al. discloses the use of a flooring panel (10) including an upper rigid sheet flooring member (12,14) having a tongue (28) at one end and a groove (30) at the other, a substantially rigid lower member (16) attached to the upper member (12,14) such that the lower member (16) has a plurality of projections (as at "18") extending away from the upper member (12,14) in support thereto, and an underlying surface (26,26a-c).

DOPPLER et al. discloses the basic claimed invention except for explicitly detailing that his lower member protects the upper member from water and permits free drainage of water thereabout and except for there being tongues and grooves on two adjacent edges. COLLETTE teaches that it is known in the art to form a flooring panel with tongues (12) and grooves (18) on adjacent edges, see figures 1 and 4. Although DOPPLER et al. is silent in regards to the lower member protecting the upper member from water and permitting free drainage of water thereabout, he does detail that the material of his lower member is a metal sheet. Even though metal is corrosive, metal is still very well known to protect other elements from water and is known to permit free drainage. For instance, in the case of creek and river runoffs, metal trenches are formed to aid in water flow, or in the case of gutters, metal gutters protect homes from external water damage and enhance water flow from the rooftop. Hence, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the flooring panel of DOPPLER et al. with tongues and grooves on adjacent edges, as taught by COLLETTE, in order to improve the efficiency of the interlock between adjacent flooring panel members thereby preventing uplift and drifting apart of the flooring panels. Also, it would have been obvious to one having ordinary skill in the

art at the time the invention was made that the metal lower rigid member of DOPPLER et al. is capable of protecting the upper member from water while also being capable of permitting the free drainage of water. In order to be given patentable weight, a functional recitation must be expressed as a "means" for performing the specified function, as set forth in 35 USC § 112, 6th paragraph, and must supported by recitation in the claim of sufficient structure to warrant the presence of the functional language.

Claims 40-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,661,937 to DOPPLER et al. in view of US Patent #4,287,693 to COLLETTE, as applied to claim 39 above, and further in view of US Patent #5,619,832 to MYRVOLD. DOPPLER et al., as modified by COLLETTE, discloses the basic claimed flooring panel except for the lower member being made from plastic material. Regarding claim 40, MYRVOLD teaches that it is known in the art to form a lower flooring member (1), that supports an upper member (P), out of a plastics material, and more specifically out of polyethylene, column 7, line 44. Hence, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the lower member of DOPPLER et al. out of the plastic polyethylene material, as taught by MYRVOLD, in order to further protect the upper member from corrosion due to extended exposure to water. In reference to claim 41, the rigid sheet-flooring member (12,14) is wood, column 5, lines 4-6.

Claims 42 and 44-52 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,661,937 to DOPPLER et al. DOPPLER et al. discloses the use of a flooring assembly (10) including a first flooring member (12) including a first upper

Art Unit: 3635

member (FUP) having a tongue (28) at one end and a groove (30) at another end and a substantially rigid lower member (16) attached to the first upper member (FUP), see the marked attachment, such that the lower member (16) has a plurality of projections (as at "18") extending away from the first upper member (FUP) in support thereto and an underlying surface (26,26a-c); and a second flooring member (14) including a second upper member (SUP), see marked attachment, having a tongue (28) at one end and a groove (30) at another and a substantially rigid lower member (16) attached to the second upper member (SUP) such that the lower member (16) also has a plurality of projections (as at "18") extending away from the second upper member (SUP) in support thereto and an underlying surface (26) wherein the edge of each of the first (FUP) upper panels and the edge of the second (SUP) upper member are configured to be connected together. DOPPLER et al. discloses the basic claimed invention except for explicitly detailing that his lower member protects the upper member from water and permits free drainage of water thereabout. Although DOPPLER et al. is silent in this regard, he does detail that the material of his lower member is a metal sheet. Even though metal is corrosive, metal is still very well known to protect other elements from water and is known to permit free drainage. For instance, in the case of creek and river runoffs, metal trenches are formed to aid in water flow, or in the case of gutters, metal gutters protect homes from external water damage and enhance water flow from the rooftop. Hence, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the metal lower rigid member of DOPPLER et al. is capable of protecting the upper member from water while also being capable of

permitting the free drainage of water. Regarding claim 44, the first panel (12) includes a groove (30) and the second panel (14) includes a tongue (28). In reference to claims 45 and 50, the groove (30) of the first (12) and second (14) panels opens in a lateral direction. Regarding claim 46, the first upper member (FUP) includes the groove (30) and the second upper member (SUP) includes the tongue (28). In reference to claim 47, the edge of both the first (12) and second (14) panels each includes a groove (20). Regarding claim 48, the panels (12,14) further include at least one key (28). In reference to claim 49, the first upper member (FUP) includes the groove (30) of the first panel (12) and the second upper member (SUP) includes the groove (30) of the second panel (14). Regarding claim 51, the rigid sheet flooring material of the first (FUP) and second (SUP) upper member members is wood, column 5, lines 4-6. In reference to claim 52, the first and second (16) lower members are adhesively attached to the first (FUP) and second (SUP) upper members, column 8, lines 11-23.

Claim 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,661,937 to DOPPLER et al. in view of US Patent #5,619,832 to MYRVOLD. DOPPLER et al. discloses the basic claimed flooring panel except for the lower member being made from plastic material. MYRVOLD teaches that it is known in the art to form a lower flooring member (1), that supports an upper member (P), out of a plastics material, and more specifically out of polyethylene, column 7, line 44. Hence, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the lower member of DOPPLER et al. out of the plastic polyethylene

material, as taught by MYRVOLD, in order to further protect the upper member from corrosion due to extended exposure to water.

Claims 53-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,661,937 to DOPPLER et al. DOPPLER et al. discloses the use of a flooring panel (10) including an upper rigid sheet floor member (12,14,32,32a-c), a substantially rigid lower member (16) attached to the upper member (12,14) such that the lower member (16) has a plurality of projections (as at "18") extending away from the upper member (12,14) in support thereto and an underlying surface (26,26a-c) wherein the panel (10) includes a groove (30) configured to connect to an edge (28) of an adjacent panel (10) and the groove (30) opens in a lateral direction. DOPPLER et al. discloses the basic claimed invention except for explicitly detailing that his lower member protects the upper member from water and permits free drainage of water thereabout. Although DOPPLER et al. is silent in this regard, he does detail that the material of his lower member is a metal sheet. Even though metal is corrosive, metal is still very well known to protect other elements from water and is known to permit free drainage. For instance, in the case of creek and river runoffs, metal trenches are formed to aid in water flow, or in the case of gutters, metal gutters protect homes from external water damage and enhance water flow from the rooftop. Hence, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the metal lower rigid member of DOPPLER et al. is capable of protecting the upper member from water while also being capable of permitting the free drainage of water. In regards to the tongue and groove members preventing vertical movement, although

DOPPLER et al. is silent in regards to preventing vertical movement, it is also obvious that the interconnection of the tongue and groove prevent vertical and horizontal movement. However, in addition to the tongue and groove interconnection, DOPPLER et al. further discloses the use a nail (24) along with the tongue and groove interconnection. The presence of this nail enhances prevention of vertical movement. The applicant is reminded that the functional recitation that "the tongue and grooves correspond to prevent relative vertical movement" has not been given patentable weight because it is narrative in form. In order to be given patentable weight, a functional recitation must be expressed as a "means" for performing the specified function, as set forth in 35 USC § 112, 6th paragraph, and must supported by recitation in the claim of sufficient structure to warrant the presence of the functional language. In reference to claim 54, the upper member (12,14) includes the groove (30). Regarding claim 55, the rigid sheet-flooring member (12,14) is wood, column 5, lines 4-6.

Response to Arguments

Applicant's arguments with respect to claims 1-12 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (703) 308-1909. The examiner can normally be reached on 6:30 am - 3:00 pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (703) 308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

YMH
July 27, 2004



Carl D. Friedman
Supervisory Patent Examiner
Group 3600

5,661,937

FIG. 3

FIG. 4

FIG. 5